

Amendment No. 1 to HB1064

Eldridge  
Signature of Sponsor

**AMEND Senate Bill No. 1267**

**House Bill No. 1064\***

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 45, Chapter 2, is amended by adding the following as a new part:

**45-2-2201.**

This part shall be known and may be cited as the "Elderly and Vulnerable Adult Financial Exploitation Prevention Act."

**45-2-2202.**

(a) As used in this part, unless the context otherwise requires:

(1) "Account" means funds or assets held by a financial service provider, including, but not limited to, a deposit account, savings account, share account, certificate of deposit, trust account, IRA, guardianship or conservatorship account, investment or securities account, retirement account, or loan or extension of credit;

(2) "Department" means the department of financial institutions unless otherwise designated in this part;

(3) "Elderly adult" means a person sixty-five (65) years of age or older;

(4) "Financial exploitation" means the unlawful appropriation or use of an elderly or vulnerable adult's property, as defined in § 39-11-106(a), for one's own benefit or that of a third party;

(5) "Financial service provider" means any of the following engaged in or transacting business in this state:

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- (A) A state or national bank or trust company;
  - (B) A state or federal savings and loan association;
  - (C) A state or federal credit union;
  - (D) An industrial loan and thrift company, regulated by chapter 5 of this title;
  - (E) A money transmitter, regulated by chapter 7, part 2 of this title;
  - (F) A check casher, regulated by chapter 18 of this title;
  - (G) A mortgage loan lender, mortgage loan broker, mortgage loan originator, or mortgage loan servicer, regulated by chapter 13 of this title;
  - (H) A title pledge lender, regulated by chapter 15 of this title;
  - (I) A deferred presentment services provider, regulated by chapter 17 of this title;
  - (J) A flex loan provider, regulated by chapter 12 of this title; or
  - (K) A home equity conversion mortgage lender, regulated by title 47, chapter 30;
- (6) "Financial transaction" means any of the following as applicable to the business or services provided by a financial service provider:
- (A) A transfer or request to transfer or disburse funds or assets in an account;

(B) A request to initiate a wire transfer, initiate and automated clearing house (ACH) transfer, or issue a money order, cashier's check, or official check;

(C) A request to negotiate a check or other negotiable instrument;

(D) A request to change the ownership of an account;

(E) A request to sell or transfer securities or other assets if the person selling or transferring the securities or assets is not required to register pursuant to title 48, chapter 1, part 1;

(F) A request for a loan, extension of credit, or draw on a line of credit; or

(G) A request to transfer the title to any real property, or the title of any motor vehicle or mobile home, or to encumber such real property, motor vehicle, or mobile home;

(7) "Law enforcement agency" means a district attorney general, municipal police department, county sheriff, the Tennessee bureau of investigation, United States attorney, FBI, secret service, or other federal law enforcement agency; and

(8) "Vulnerable adult" means a person eighteen (18) years of age or older who, because of mental or physical dysfunction, is unable to fully manage the person's own resources, carry out all or a portion of the activities of daily living, or is unable to fully protect against neglect, exploitation, or hazardous or abusive situations without assistance from others.

**45-2-2203.**

(a) If a financial service provider has reasonable cause to suspect that financial exploitation may have occurred, may have been attempted, or is being attempted, the

financial service provider may, but is not required to, refuse a financial transaction or delay a financial transaction on an account:

- (1) Of the elderly or vulnerable adult;
- (2) On which the elderly or vulnerable adult is a beneficiary, including a trust, guardianship, or conservatorship account; or
- (3) Of a person suspected of perpetrating financial exploitation.

(b)

(1) A financial service provider may also refuse a financial transaction or delay a financial transaction under this section if the department of human services or a law enforcement agency provides information to the financial service provider demonstrating that it is reasonable to believe that financial exploitation may have occurred, may have been attempted, or is being attempted.

(2) Except as ordered by a court, a financial service provider is not required to refuse a financial transaction or delay a financial transaction when provided with information by the department of human services or a law enforcement agency alleging that financial exploitation may have occurred, may have been attempted, or is being attempted, but may use its discretion to determine whether to refuse a financial transaction or hold a financial transaction based on the information available to the financial service provider.

(c) A financial service provider that refuses a financial transaction or holds a financial transaction based on reasonable cause to suspect that financial exploitation may have occurred, may have been attempted, or is being attempted shall:

(1) Except with regard to an account administered by a bank or trust company in a fiduciary capacity, make a reasonable effort to notify one (1) or

more parties authorized to transact business on the account orally or in writing;  
and

(2) Report the incident, if it involves financial exploitation, to the department of human services adult protective services division, as provided in § 71-6-103.

(d) No notice under this section shall be required to be provided to any party authorized to conduct business on the account if the party is the suspected perpetrator of financial exploitation.

(e) Any refusal by a financial service provider to conduct a financial transaction or hold a financial transaction as authorized by this section based on the financial service provider's reasonable cause to suspect that financial exploitation may have occurred, may have been attempted, or is being attempted expires upon the earlier of:

(1) Ten (10) business days after the date on which the financial service provider first refused or held the financial transaction unless earlier terminated by an order of a court of competent jurisdiction, if the transaction involved the sale of a security or offer to sell a security and the person selling or offering to sell is not required to register pursuant to title 48, chapter 1, part 1;

(2) Five (5) business days after the date on which the financial service provider first refused a financial transaction or held the financial transaction, if the transaction did not involve the sale of a security or offer to sell a security, unless earlier terminated by an order of a court of competent jurisdiction;

(3) The time when the financial service provider reasonably believes that the financial transaction will not result in financial exploitation; or

(4) The time when the customer requesting the transaction has been advised of a potential risk in the transaction and the customer has requested the

transaction to continue as long as the customer is not the suspected perpetrator of financial exploitation.

(f) A financial service provider may extend the time permitted in this section to refuse a financial transaction or hold a financial transaction based on a reasonable belief that additional time is needed to investigate the financial transaction or to prevent financial exploitation.

(g) Notwithstanding subsection (e), a court of competent jurisdiction may enter an order extending the time that a financial service provider must refuse a financial transaction or hold a financial transaction based on reasonable cause to suspect that financial exploitation may have occurred, may have been attempted, or is being attempted.

(h) A financial service provider, or an employee of a financial service provider, is immune from all criminal, civil, and administrative liability:

(1) For refusing or not refusing a financial transaction, or holding or not holding a financial transaction under this section; or

(2) For actions taken in furtherance of the determination made under subdivision (h)(1) if the determination was based upon a reasonable belief.

**45-2-2204.**

(a) A financial service provider may offer to an elderly or vulnerable adult the opportunity to submit and periodically update a list of persons that the elderly or vulnerable adult authorizes the financial service provider to contact when the financial service provider has reasonable cause to suspect that the adult is a victim or a target of financial exploitation.

(b) Notwithstanding subsection (a), a financial service provider, or an officer or employee of the financial service provider, that has reasonable cause to suspect that an elderly or vulnerable adult is the victim or target of financial exploitation may convey the

suspicion to one (1) or more of the following, provided that the person is not the suspected perpetrator:

(1) Persons on the list described in subsection (a), if a list has been provided by the elderly or vulnerable adult;

(2) A co-owner, additional authorized signatory, or beneficiary on the elderly or vulnerable adult's account; or

(3) A person known by the financial service provider to be a family member, including a parent, adult child, or sibling.

(c) When providing information under this section, the financial service provider may limit the information and disclose only that the financial service provider has reasonable cause to suspect that the elderly or vulnerable adult may be a victim or target of financial exploitation without disclosing any other details or confidential personal information regarding the financial affairs of the elderly or vulnerable adult.

(d) The financial service provider may choose not to contact one (1) or more persons on the list provided pursuant to subsection (a) if the financial service provider suspects that the person or persons are engaged in financial exploitation.

(e) The financial service provider may rely on information provided by the customer in compiling a list of contact persons.

(f) A financial service provider, or an employee of a financial service provider, is immune from all criminal, civil, and administrative liability for contacting a person or electing not to contact a person under this section and for actions taken in furtherance of that determination if the determination was made based on reasonable belief.

(g) Contact with any person, and any information provided under this section, is exempt from the customer consent and customer notice provisions in §§ 45-10-105 and 45-10-106.

**45-2-2205.**

(a) A financial service provider may refuse to accept an acknowledged power of attorney if the financial service provider has reasonable cause to suspect that the principal is or may be the victim or target of financial exploitation by the agent or person acting for or with the agent.

(b) A financial service provider, or an employee of a financial service provider, is immune from all criminal, civil, and administrative liability for refusing to accept a power of attorney or for accepting a power of attorney under this section and for actions taken in furtherance of that determination if the determination was based upon reasonable belief.

**45-2-2206.**

It is the intent of the general assembly in adopting this part to allow financial service providers the discretion to take actions to assist in detecting and preventing financial exploitation without liability. The general assembly recognizes that financial service providers are in a unique position by conducting financial transactions on behalf of and at the request of their customers. Financial service providers have duties imposed by contract and duties imposed by both federal and state law to conduct financial transactions requested by their customers faithfully and timely in accordance with the customer's instructions. Further, financial service providers do not have a duty to contravene the valid instructions of their customers, nor to prevent criminal activity directed at their customers, and nothing in this part creates such a duty.

SECTION 2. Tennessee Code Annotated, Section 45-10-103(8), is amended by deleting the semicolon and adding the following language at the end of the subdivision:

, if the subpoena shows on its face that it is in compliance with:

(A) The notice requirements of § 45-10-106;

(B) The delay provisions of § 45-10-117; or



(C) An administrative subpoena issued by the department of human services pursuant to § 45-10-115;

SECTION 3. Tennessee Code Annotated, Title 45, Chapter 10, is amended by adding the following as a new section:

(a) A financial institution shall provide access to or copies of records that are relevant to suspected actual or attempted financial exploitation, as defined in § 45-2-2202, in response to an administrative subpoena that satisfies the requirements of § 45-10-103(8) issued by the department of human services, adult protective services as provided in § 71-6-103(j)(4)(A). The records requested pursuant to this subsection (a) must be limited to historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation not to exceed thirty (30) calendar days prior to the first transaction that was reported, or thirty (30) calendar days after the last transaction that was reported.

(b) The administrative subpoena and records provided under this section are exempt from the customer consent and customer notice requirements of §§ 45-10-105 and 45-10-106.

(c) A financial institution has up to fourteen (14) business days to respond to an administrative subpoena described in subsection (a).

(d) The department of human services must provide notice to the customer whose records are requested pursuant to subsection (a) not later than thirty (30) days after receipt of the records from the financial institution. However, the department may delay the notice to the customer by seeking a judicial delay pursuant to § 45-10-117.

SECTION 4. Tennessee Code Annotated, Section 45-10-109, is amended by deleting the words "internal revenue service" and by inserting the words "financial institution's published fee schedule".

SECTION 5. Tennessee Code Annotated, Section 45-2-704(a)(5), is amended by deleting the second sentence and substituting instead the following:

A bank initiating, joining in, joined into, or defending in any manner, an interpleader action shall be entitled to recover from the funds tendered or offered to be tendered the costs of the action, including reasonable attorneys' fees.

SECTION 6. The Department of Financial Institutions is encouraged, within existing public or private resources, to consult with financial service providers as defined in this act, the Tennessee Commission on Aging and Disability, and the Department of Human Services to consider distributing public education and information to alert the public to the dangers posed to elderly and vulnerable adults by financial exploitation.

SECTION 7. This act shall take effect July 1, 2017, the public welfare requiring it. Section 1 of this act shall be repealed on June 30, 2022.